

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 5418 OF 1995

WITH

CIVIL APPLICATION NO. 1654 OF 1996.

For Approval and Signature:

Hon'ble MR.JUSTICE M.R.CALLA

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

Nos. 1 to 5 No.

GUJARAT SMALL INDUSTRIES CORPORATION LTD.,

Versus

BIPINKUMAR RANCHHODLAL PATEL

Appearance:

MR PV HATHI for Petitioner

MR.T.R.MISHRA for Respondent.

Respondent Mr. Bipinkumr Ranchhodlal Patel is also present.

CORAM : MR.JUSTICE M.R.CALLA

Date of decision: 26/06/96

ORAL JUDGEMENT

This Special Civil Application is directed against the award dated 5.5.1995 passed by the Labour Court in Reference (LCA) No. 442 of 1987 whereby the relief of reinstatement with full backwages from 8.8.1986 has been granted to the respondent.

The respondent was appointed as Junior Typist with the Gujarat Small Industries Corporation Ltd., Ahmedabad for the first time vide order dated 22.7.1980 with effect from 11.6.1980. Thereafter by different orders passed on 18.8.1980, 28.10.1980, 17.12.1980, 2.4.1981, 2.5.1981, 13.7.1981, 18.9.1981, 9.11.1981 and 8.1.1982, he was appointed each time for a period of two months and vide order dated 4.3.1982 his services were terminated with effect from 2.3.1982. On 8.8.1986 the respondent approached the Assistant Commissioner of Labour for making a reference to the Industrial Tribunal. The reference was made on 17.3.1987 and the Labour Court passed the impugned award on 5.5.1995 in favour of the respondent. This award dated 5.5.1995 has been challenged by the Gujarat Small Industries Corporation Ltd. through this Special Civil Application filed on 4.7.1995.

The Labour Court has held that the respondent had worked from 11.6.1980 till the date. He was relieved on 4.3.1982 and had thus worked for more than 240 days so as to entitle him to the protection of section 25-F of the Industrial Disputes Act and therefore he was entitled to the relief of reinstatement. On the question of backwages the Labour Court considered that the respondent had approached the Assistant Commissioner of Labour to raise industrial dispute in August, 1986 against his unlawful termination of March, 1982 and therefore he was not entitled to any backwages for the period prior to 8.8.1986 and full backwages have been granted beyond 8.8.1986 believing the case of the respondent that he had not remained in gainful employment during the entire period of the pendency of the dispute.

Mr.Hathi on behalf of the corporation has submitted that the respondent had been appointed only against the leave vacancy on each time for a period of two months only and further that he had not worked for a period of 240 days. He has relied upon the notional break of a day or two or for few days at the time when the different orders were passed between July, 1980 and January, 1982. May be that the respondent was appointed against the leave vacancy, the fact remains that he is entitled to the benefit of section 25-B of the Industrial Disputes Act so as to treat his service to be continuous and uninterrupted as even for the days of the notional breaks as above there was no cessation of work on account of the fault on the part of the workman at any point of time. In any case, there is no basis to interfere with the finding of the Labour Court that the respondent had worked for more than 240 days and as on the date he was

relieved, he was entitled to the protection of section 25-F of the Industrial Disputes Act and it is clearly established rather it is the case of the corporation itself that the requirement of section 25-F of the Industrial Disputes Act had not been followed. Once it is found that the respondent was entitled to the protection of section 25-F of the Industrial Disputes Act and it is established that the retrenchment was made effective without following these requirements as condition precedent, the retrenchment ipso facto becomes unlawful rather it is null and void. In this view of the matter, I do not find any reason whatsoever to disturb or interfere with the relief of reinstatement which has been granted to the respondent workman.

So far as the question of backwages is concerned, the Labour Court itself has not granted any backwages for any period prior to 8.8.1986. Because the respondent himself had raised the dispute on 8.8.1986 against his termination which was made effective way back in March, 1982. Although Mr.Hathi has argued that the respondent was not entitled to any relief and the reference should have been rejected by the Labour Court on the ground of delay alone for the simple reason that the dispute was raised in 1986 against unlawful termination of 1982, but I do not feel inclined now to interfere with the award of the Labour Court passed in the year 1995 in dispute which was raised in 1986 with regard to termination of 1982. If the Labour Court has not rejected the reference on the ground of delay and has adjudicated the same, I do not find any reason now to set aside the award passed by the Labour Court on the ground that the respondent had raised the dispute in 1986 i.e. after about four years from the date of his termination, more particularly when the Labour Court itself has taken care not to grant any backwages for this period to the respondent. The relief of full backwages which has been granted for the period beyond 8.8.1986, I find that this relief has been granted by the Labour Court merely by acting upon a bald statement made by the respondent that he had not remained in gainful employment through out the period of the pendency of the dispute. The respondent may have suffered some hardship on account of retrenchment which has been found to be unlawful and therefore he may be entitled to adequate amount of compensation for suffering on that aspect of the matter but keeping in view the fact that the appointment was against the leave vacancy and every time the appointment was given for a period of two months and on expiry of the period of last order he was relieved. I do not find that it was a fit case for granting full backwages for the entire period right from

the date when the dispute was raised by the respondent. Having heard both the sides I am of the view that so far as the question of backwages for the intervening period is concerned, the relief granted by the Labour Court cannot be sustained and it would meet the ends of justice if the respondent is directed to be compensated by paying him a lump sum amount of Rs.10,000/- (Rupees Ten Thousand only) and the impugned award deserves to be modified accordingly while maintaining that the respondent has to be reinstated and has to be continued in service as if the termination order had never been passed against him and except for the financial benefit for the intervening period the respondent has to be reinstated and has to be treated to be continuing in service. The respondent who is present before the Court is also agreeable if the relief of reinstatement is maintained and he is treated to be continuing in service for all purposes except financial benefits for the intervening period but with an amount of Rs.10,000/(Rupees Ten Thousand only) as compensation as has been given out by his learned counsel Mr.T.R.Mishra on his behalf under his instructions who is also present before the Court.

Mr.Mishra has raised a grievance that despite the award dated 5.5.1995 upto this date the respondent has not been reinstated although the interim order has been passed by this Court against the award dated 5.5.1995 on 23.11.1995 only and the petitioner was under an obligation to pass reinstatement orders within a period of thirty days from the date of the publication of the award but that obligation was never discharged. Be that as it may now that the matter has been finally decided and in view of the final decision in the main Special Civil Application the interim order dated 23.11.1995 stands automatically vacated. It is expected that the petitioner corporation shall issue reinstatement orders with regard to the respondent reinstating him from the date of the award and shall also pay the entire dues as if he had been reinstated from the date of the award.

In the result, this Special Civil Application succeeds in part and the impugned award passed by the Labour Court is modified to the extent that while the relief of reinstatement is sustained so as to treat the respondent to be continuing in service except for the financial benefit for the intervening period with entitlement to receive a sum of Rs.10,000/- (Rupees Ten Thousand only) from the Gujarat Small Industries Corporation Ltd. against the compensation as lump sum amount for suffering unlawful retrenchment. So far as the period beyond 5.5.1995 i.e. date of the award is

concerned, the observations have already been made in the earlier part of this judgment. Rule is made absolute accordingly. No order as to costs. Interim order shall stand automatically vacated.

Since the main Special Civil Application itself has been decided today, in view of the orders passed in the main Special Civil Application, no orders are required to be passed in Civil Application and the Civil Application is accordingly rejected.
